

BEFORE THE FEDERAL ELECTION COMMISSION

2013 FEB 15 AM 8:48

In the Matter of)
)
MURs 6574 & 6628)
BEAVEN FOR CONGRESS)
AND Nanci Whitley, AS TREASURER)
)

CELA

DISMISSAL AND
CASE CLOSURE UNDER
THE ENFORCEMENT
PRIORITY SYSTEM

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System ("EPS"), the Commission uses formal scoring criteria to allocate its resources and decide which cases to pursue. These criteria include, but are not limited to, an assessment of the following factors: (1) the gravity of the alleged violation, both with respect to the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the legal complexity of issues raised in the case; (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended (the "Act"); and (5) development of the law with respect to certain subject matters. It is the Commission's policy that pursuing low-rated matters, compared to other higher-rated matters on the Enforcement docket, warrants the exercise of its prosecutorial discretion to dismiss cases under certain circumstances, or, where the record indicates that no violation of the Act or underlying Commission regulations has occurred, to make a no reason to believe finding. The Office of General Counsel ("OGC") has scored MURs 6574 and 6628 as low-rated matters and has also determined that they should not be referred to the Alternative Dispute Resolution Office. For the reasons set forth below, OGC recommends that the Commission exercise its prosecutorial discretion to dismiss MURs 6574 and 6628.¹

¹ MUR 6574 EPS rating:
MUR 6628 EPS rating:

¹ Complaint Filed: May 11, 2012. Response Filed: June 1, 2012.
Complaint Filed: August 16, 2012. Response Filed: September 10, 2012.

13044333903

1 Complainant Vipin Verma has filed two separate complaints alleging irregularities in
2 reports filed by Beaven for Congress and Nanci Whitley in her official capacity as treasurer (the
3 "Committee");² in MUR 6574, the Complainant alleges that the Committee's 2012 April
4 Quarterly Report and amendments contain irreconcilable discrepancies in cash on hand, receipts
5 and disbursements; in MUR 6628, the Complainant alleges cash on hand discrepancies between
6 two sets of successive filings. MUR 6574 Compl. at 1; MUR 6628 Compl. at 1.

7 In MUR 6574, the Complainant states that in the Committee's 2012 April Quarterly
8 Report, the first report filed by the Committee, the Committee reported total receipts of \$23,810,
9 beginning cash of \$16,583, and cash on hand of \$27,951 and asserts it is "inconceivable" that the
10 Committee "has more cash on hand than was taken in total receipts." MUR 6574 Compl. at 1.
11 The Complainant also claims that the \$13,875.62 cash on hand reported in an amended 2012
12 April Quarterly Report³ was inconsistent with the \$16,583 cash on hand figure shown on the
13 FEC website's candidate summary page.⁴ *Id.* The Complainant also alleges a discrepancy
14 between an amended April Quarterly Report, in which the Committee reported \$9,734.38 in total
15 disbursements for the reporting period, and the candidate summary page, which indicates that the
16 Committee made \$12,442 in total disbursements. The Complainant then claims that the
17 Committee did not disclose the source of funds for its beginning cash on hand in its April

² Vipin Verma was a congressional candidate in Florida's 6th District ("FL-06"); Beaven for Congress is the principal campaign committee for Heather Beaven, a candidate in FL-06.

³ The Complaint refers to the "latest amendment of the April Quarterly." MUR 6574 Compl. at 1. The Committee, however, filed four amendments to the April Quarterly report — on April 13, April 15, May 31, and July 11. Given that the Complaint was filed on April 27, 2012, it is likely that the Complaint refers to the April 15, 2012, amendment to the April Quarterly report.

⁴ In the FEC website's candidate summary page, it reflects a combined total of all financial information reported in connection to a candidate over a two-year cycle, from January 1 of the odd-numbered year through December 31 of the following year, and includes information drawn from the candidate's principal campaign committee and all authorized committees. The information is generated by data filed with the FEC, and can be found by searching the candidate or committee's name on the FEC website:
<http://www.fec.gov/finance/disclosure/srssea.shtml>.

13044333904

1 Quarterly report, and also alleges that the Committee accepted an excessive contribution.⁵ *Id.* In
2 MUR 6628, the Complainant claims that the beginning cash on hand of \$14,250 reported in the
3 Committee's 2012 July Quarterly Report deviated from the closing cash on hand of \$14,249.54
4 in its amended 2012 April Quarterly Report, which was filed on July 11, 2012, and claims that
5 the beginning cash on hand of \$14,250 reported in the Committee's 2012 Pre-Primary filing
6 differed from the closing cash on hand of \$47,567.19 in its 2012 July Quarterly Report.⁶ MUR
7 6628 Compl. at 1.

8 In response to the MUR 6574 complaint, the Committee, without providing any specific
9 detail, acknowledged that its 2012 April Quarterly Report was in error. MUR 6574 Resp. at 1.
10 The Committee claims that the error was discovered immediately upon filing its report, "and the
11 FEC was notified."⁷ *Id.* In response to the MUR 6628 complaint, the Committee acknowledged
12 that its initial pre-primary filing had erroneously reported the beginning cash on hand balance,
13 and explained that it had used an incorrect date for the reporting period when calculating the
14 beginning cash on hand. MUR 6628 Resp. at 1. The Committee also stated that after
15 discovering the error, it spoke with the Reports Analysis Division ("RAD"), and immediately
16 filed an amendment.⁸ *Id.*

⁵ On its initial 2012 April Quarterly Report, and subsequent disclosure reports, the Committee reported a \$3,000 contribution from Michael H. Kerr, received on March 20, 2012, designated for the primary election.

⁶ The \$14,249.54 closing cash on hand in the 2012 April Quarterly Report appears to have been rounded to the nearest dollar amount (\$14,250) when it was reported as the beginning cash on hand in the 2012 July Quarterly Report.

⁷ It appears the Committee is referring to amendments to its 2012 April Quarterly Report, filed on April 13, 2012, and April 15, 2012, as well as telephone conversations with the Reports Analysis Division ("RAD"). The Committee also claims it had been awaiting instructions on how to properly correct its report. The record is vague with regard to the source from which the Committee was awaiting instructions. MUR 6574 Resp. at 1. RAD telephone logs show that the Committee called RAD in April 2012 with questions about reporting properly. The telephone logs indicate that in two instances the Committee's questions were answered, and in a third instance RAD advised the Committee to contact its software vendor for specific help with correcting a report.

⁸ The Committee enclosed a copy of its amended 2012 Pre-Primary Report, filed on August 15, 2012.

13044333905

1 Committees that report an initial cash balance on their first FEC filing are required to
2 disclose the source of funds. 11 C.F.R. §§ 104.3(a)(1); 104.12. In its initial 2012 April
3 Quarterly Report, the Committee reported a beginning cash on hand balance of \$13,875.62, but
4 the Committee did not clarify the source of funds. After filing two amended reports in April
5 2012 that neither changed the beginning cash on hand nor disclosed the source of the funds, the
6 Committee, on May 31, 2012, filed another amendment, in response to a Request for Additional
7 Information ("RFAI") from RAD. In that amendment, the Committee reported a beginning cash
8 on hand balance of zero and a closing cash on hand balance of \$13,975.62. Subsequently, the
9 Committee filed an additional amendment in July 2012, disclosing a closing cash on hand
10 balance of \$14,249.54.⁹ Based on the available information, it appears that the Committee made
11 an effort to correct its reports, sought assistance from RAD, and has revised its 2012 April
12 Quarterly Report to correctly reflect the Committee's finances. Due to the Committee's
13 corrective action, we believe that further enforcement action is unwarranted, and we recommend
14 the Commission dismiss this allegation pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985).

15 Committees are required to accurately report their cash on hand at the beginning of a
16 reporting period. See 2 U.S.C. § 434(b)(1), (7)-(8). On July 30, 2012, the Committee filed its
17 2012 Pre-Primary, reporting \$14,250 in beginning cash on hand.¹⁰ On August 15, 2012, the
18 Committee filed an amended 2012 Pre-Primary, correcting its beginning cash on hand to match
19 the closing cash on hand in its preceding report: \$47,567.19. The Committee acknowledged that
20 it had erroneously reported its beginning cash on hand in its original filing, and stated that after

⁹ After the 2012 April Quarterly Report amendments were filed, RAD sent no further requests to the Committee regarding this issue.

¹⁰ The amount initially reported in the Pre-Primary Report, \$14,250, was the same as the beginning cash on hand reported in the prior report, the 2012 July Quarterly Report, instead of the closing cash on hand in that report, \$47,567.19.

1 discovering the error it immediately amended the report. Because the Committee promptly
2 amended its 2012 Pre-Primary to correct the error, we recommend the Commission dismiss
3 pursuant to *Heckler* as to the allegation that the Committee failed to accurately report its cash on
4 hand balance in the 2012 Pre-Primary Report.

5 As to the alleged discrepancies between the Committee's reports and the FEC website
6 candidate summary page, we note that during the 2011-2012 election cycle, two separate
7 authorized campaign committees used the name Beaven for Congress.¹¹ The information on the
8 FEC website's candidate summary pages shows a combined total of all committees connected to
9 a candidate during a two-year cycle, thus the figures on Beaven's candidate summary page
10 reflected both committees.¹² The differences between the candidate summary page and the
11 Committee's disclosure reports are due to a combined summary of both committees and are not
12 the result of reporting errors by the Committee; therefore, we recommend the Commission find
13 no reason to believe the Committee and its treasurer violated the Act or underlying Commission
14 regulations with respect to this allegation.

15 Excessive contributions to a federal candidate's campaign are prohibited.¹³ See 2 U.S.C.
16 § 441a(a)(1)(A). If a committee receives a contribution that appears to be excessive, the

¹¹ The first, FEC ID C00463778, was for Beaven's 2010 campaign, which was in existence from July 10, 2009, through April 21, 2011. The final disclosure report for the first committee was filed on April 14, 2011, and reported a beginning cash on hand balance of \$2,707.84. The second committee, FEC ID C00515106, filed its 2012 April Quarterly Report on April 13, 2012, and reported a beginning cash on hand balance of \$13,875.62.

¹² The figures on Beaven's candidate summary page reflected the first committee's final report from April 2011 and the second committee's initial report from April 2012. Thus, the beginning cash on hand on the candidate summary page showed a combined total for both committees of \$16,583 (\$2,707.84 + \$13,875.62). Similarly, the final report of the first committee, from April 2011, indicates \$2,707.84 in total disbursements were made in that reporting period. Combined with the total disbursements of \$9,734.38 reported on the April 15, 2012, amended report, the candidate summary page would show total disbursements of \$12,442.22.

¹³ The FEC adjusts certain contribution limits to index for inflation. At the time of the activity, the limit that individuals were permitted to contribute to a candidate's authorized committee, per election, was \$2,500. 76 Fed. Reg. 8368, 8370 (Feb. 14, 2011).

13044333907

1 committee may return or deposit the contribution. 11 C.F.R. § 103.3(b)(3). If a contribution is
2 deposited, a committee may request that the contributor redesignate or reattribute the
3 contribution in accordance with 11 C.F.R. § 110.1(b), (k), or 110.2(b). *Id.* If the contribution is
4 not redesignated or reattributed, the treasurer must refund the contribution within 60 days. On its
5 2012 April Quarterly Report and subsequent filings, the Committee reported that Michael H.
6 Kerr contributed \$3,000 on March 20, 2012, for the primary election. The Committee did not
7 address this in its response and has not reported a refund of the excessive amount, a
8 redesignation toward the general election, or a reattribution. Therefore, the Committee appears
9 to be in violation of the contribution limits set forth in 2 U.S.C. § 441a.

10 Because the Committee has not taken corrective action regarding the receipt of an
11 apparent excessive contribution, the Office of General Counsel believes that the Commission
12 should remind the Committee to either redesignate, reattribute, or refund the excessive
13 contribution and amend its 2012 April Quarterly Report accordingly. The Office of General
14 Counsel recommends, in furtherance of the Commission's priorities, that the Commission
15 exercise its prosecutorial discretion and dismiss this matter pursuant to *Heckler v. Chaney*,
16 470 U.S. 821 (1985), as to the allegation involving the Committee's acceptance of an excessive
17 contribution. The Office of General Counsel also recommends the Commission approve the
18 attached Factual and Legal Analysis and the appropriate letters, and close the file.

19
20 **RECOMMENDATIONS**

- 21
22
23 1. Dismiss the allegations that Beaven for Congress and Nanci Whitley in her official
24 capacity as treasurer violated 2 U.S.C. § 434(b) by failing to accurately disclose its
25 beginning cash on hand, receipts, and disbursements;
26

13044333908

2. Find no reason to believe the Committee and its treasurer violated the Federal Election Campaign Act of 1971, as amended, or underlying Commission regulations, with respect to any alleged discrepancies between the Committee's reports and the FEC website candidate summary page;
3. Dismiss the allegations that Beaven for Congress and Nanci Whitley in her official capacity as treasurer violated 2 U.S.C. § 441a by receiving an excessive contribution;
4. Remind Beaven for Congress and Nanci Whitley in her official capacity as treasurer to either redesignate, reattribute, or refund the excessive contribution pursuant to 2 U.S.C. § 441a, 11 C.F.R. § 103.3(b) and 11 C.F.R. § 110.1(b)(5), and amend its 2012 April Quarterly Report accordingly;
5. Approve the attached Factual and Legal Analysis;
6. Close the file, and approve the appropriate letters.

Anthony Herman
General Counsel

2/13/13
Date

BY:

Gregory R. Baker
Deputy General Counsel

Jeff S. Jordan
Supervisory Attorney
Complaints Examination
& Legal Administration

Donald E. Campbell
Attorney
Complaints Examination
& Legal Administration

13044333909